

# HEALTH SERVICES AND DEVELOPMENT AGENCY

## MINUTES

September 23, 2015

### AGENCY MEMBERS PRESENT

Johnson, D. Lynn, Chair  
Wright, James, Vice-Chair  
Burns, Charlotte  
Fleming, Martin, M.D.  
Mills, Thom  
Grandy, Joe  
Ridgway, Corey  
Gaither, Keith, designee for the TennCare Director  
Jordan, Lisa, designee for the Commissioner of Commerce and Insurance

### AGENCY MEMBERS ABSENT

Doolittle, Robert S  
Austin, Jaclyn, designee for the Comptroller of the Treasury

### AGENCY STAFF PRESENT

Hill, Melanie, Executive Director  
Ausbrooks, Mark Administrative Assistant III  
Christoffersen, Jim, General Counsel  
Craighead, Alecia, Statistical Analyst III  
Earhart, Phillip, HSD Examiner  
Farber, Mark, Deputy Director  
Finchum, Rhonda, Administrative Officer  
Grimm, Jeff, HSD Examiner

### COURT REPORTER

Deen, Meschelle Manley

### GUESTS PRESENT

Akers, Laura, Counsel, Professional Case Management  
Arney, Anne, Esq., Bone McAllister  
Austin, Greg, President, Professional Case Management  
Baker, Graham, Jr., Esq., Anderson & Baker  
Bhushan, Sumeet, M.D., Chattanooga Endoscopy Center  
Brent, Michael D., Esq., Bradley Arant Boult Cummings, LLP  
Briley, C. David, Esq., Bone McAllister  
Best, Amanda, PHC  
Carpenter, Emily, Vanderbilt  
Duncan, Bruce, Assistant Vice President, National HealthCare Corporation  
Dyer, Janice, Planning, Memorial  
Estes, Linda, THCA  
Felts, Ginna, Business Development, Vanderbilt University Medical Center  
Key, David, Senior Vice President, Select Medical  
Khesht, Sohelia, Regional Director, THM  
Leffew, Myla, Administrator, Quality Private Duty Care  
Lewis, David, Esq., Miller Martin  
Looney, Kim Harvey, Esq., Waller Lansden Dortch & Davis  
McMillian, Debby, Amsurg Corporation  
Merville, LaDonna, Vice President, HAT  
Phillips, W. Brantley, Esq., Bass Berry & Sims  
Reed, Ann, R., RN, BSN, MBA, Director of Licensure, TDH, Division of Health Care Facilities

Sansing, Trent, CON Director, TDH  
Sheesly, Ken, Owner, HRA, LLC.  
Smith, Doug, C.O.O., Emerald Shelter  
Smith, Rhonda, Assistant Administrator, Quality Private Duty Care  
Swearingen, Travis, Esq., Kramer Rayson, LLP  
Taylor, Jerry W., Esq., Burr & Forman  
Thomas, Kelly, Esq., THM  
Trauger, Byron R., Esq., Trauger & Tuke  
Vetter, Stacie, Assistant Vice President, National HealthCare Corporation  
Vogt, Jennifer, Vice President of Operations, Kindred Health Services  
Wood, Steve, C.E.O., Emerald Shelter  
Wright, Jillian, Amsurg Corporation

### **ROLLCALL TO ESTABLISH QUORUM**

Mr. Johnson requested roll call to establish quorum.

PRESENT: Jordan, Mills, Gaither, Ridgway, Wright, Burns, Fleming, Grandy, Johnson

Nine (9) members present.

### **DIRECTOR'S ANNOUNCEMENTS**

Melanie Hill, Executive Director, made general announcements regarding the following:

- 1) Instructions were provided for those providing testimony on the scheduled agenda items;
- 2) Six applications are scheduled for October, four for November, all of which are free-standing satellite emergency department applications, and five for December;
- 3) Meeting dates for November and December will be November 18<sup>th</sup> and December 16<sup>th</sup>;
- 4) The Senate Commerce and Labor Study Committee on SB 992 which proposes to eliminate most health care services from Certificate of Need is set to heard on October 22 at 9 AM in Room 12. Members of the committee include Senators Gardenhire, Johnson, and Watson with Senator Gardenhire serving as the chair.

### **APPROVAL OF MINUTES**

Mr. Johnson presented August 26, 2015 minutes for approval.

Ms Jordan moved for approval of the minutes as presented. Mr. Wright seconded the motion. The motion CARRIED [9-0-0]. **APPROVED by unanimous voice vote**

AYE: Jordan, Mills, Gaither, Ridgway, Wright, Burns, Fleming, Grandy, Johnson

NAY: None

### **STATE HEALTH PLAN UPDATE**

Jeff Ockerman, Director, Division of Health Planning, Department of Health, presented a brief update as follows:

1. 2014 State Health plan was updated and signed on August 18<sup>th</sup> by the Governor. It is currently on the HSDA website.
2. Currently working on Neo-Natal Services and in-patient Psychiatric beds and researching Freestanding Emergency Departments.

### **CERTIFICATE OF NEED APPLICATIONS**

*Mark Farber summarized the following CON Applications:*

**Hero Healthcare, (Oliver Springs, Morgan County), TN – CN1504-012**

*Mr. Mills recused.*

To establish a home care organization and initiate home health services limited to a specific patient, who is a beneficiary of the United States Department of Labor, Division of Energy Employees Occupation Illness Compensation Program (EEOICP). The parent office will be located at 231 Walls Hollow Road, Oliver Springs (Morgan County), Tennessee. The proposed service area is Anderson and Morgan Counties. The estimated project cost is \$29,680.

The Agency heard the applicant's request for a second deferral.

C. David Briley, Esq., addressed the Agency on behalf of the applicant.

Speaking in opposition were: Graham Baker, Esq.; Kim Looney, Esq.; Jennifer Vogt for The Home Option.

Present in opposition were: Greg Austin, Professional Case Management; Rhonda Smith, Quality Private Duty Care and Myla Leffew, Quality Private Duty Care.

Mr. Wright moved for deferral for 30 days and that the Agency be directed to issue a cease and desist letter to the applicant until such time as its CON application could be heard and a determination could be made on the application. Mr. Grandy seconded the motion. The motion CARRIED [8-0-0]. **APPROVED**

AYE: Jordan, Gaither, Ridgway, Wright, Burns, Fleming, Grandy, Johnson

NAY: None

**CAMM Care LLC d/b/a Patriot Homecare - (Harriman, Roane County), TN - Project No. CN1506-023**

*Mr. Mills recused.*

To establish a home care organization and initiate home health services limited to patients, who are beneficiaries of the United States Department of Labor, Division of Energy Employees Occupation Illness Compensation Program (EEOICP). The parent office will be located at 514 Devonia Street, Harriman (Roane County), Tennessee. The proposed service area is Anderson, Knox, Meigs, Morgan, and Roane Counties. The estimated project cost is \$41,080.

C. David Briley, Esq., addressed the Agency on behalf of the applicant.

Speaking in support were: Amanda Best, Patriot Homecare, RN; Patricia Davidson, Megan Mullins, Patriot Homecare; and Caleb Mullins, Patriot Homecare.

Speaking in opposition were: Graham Baker, Esq.; Kim Looney, Esq.; Jennifer Vogt for The Home Option.

Present in opposition were: Greg Austin, Professional Case Management; Rhonda Smith, Quality Private Duty Care and Myla Leffew, Quality Private Duty Care.

David Briley, Esq., rebutted on behalf of the applicant.

Graham Baker, Esq., and Kim Looney, Esq., provided opposition summation.

David Briley, Esq., provided applicant summation.

Mr. Wright moved for denial of the project based on: The failure to provide evidence that this service would be unique and that other services that are already existing in the area could not provide it. And, therefore, I feel

that it fails the test of the criteria of need and that this application should be denied. Ms. Jordan seconded the motion. The motion CARRIED [8-0-0]. **DENIED**

AYE: Jordan, Gaither, Ridgway, Wright, Burns, Fleming, Grandy, Johnson  
NAY: None

**Ms. Jordan left the Meeting.**

**Chattanooga Endoscopy Center - (Chattanooga, Hamilton County), TN - Project No. CN1506-024**

*Mr. Ridgway and Ms. Burns recused.*

The relocation of The Chattanooga Endoscopy Center, an existing single specialty ASTC limited to endoscopy, from 2341 McCallie Avenue, Plaza 3, Suite 303 to leased space on the first floor of The Riverside Business Center at 1501 Riverside Drive, Suite 117, Chattanooga, TN, a distance of approximately 3 miles and to expand its existing surgical complement from 3 to 5 procedure rooms with a 6th procedure room to be shelled in for potential future expansion. The estimated project cost is \$8,623,911.00. **OPPOSITION: DEFERRAL REQUESTED by Erlanger Health System.**

Brant Phillips, Esq., addressed the Agency on behalf of the applicant.

Speaking in opposition was: David Lewis, Esq., on behalf of Erlanger Health System.

David Lewis, Esq., provided opposition summation.

Brant Phillips, Esq., provided applicant summation

Mr. Mills moved for denial of the deferral and to hear the application as it was presented on the agenda. Mr. Grandy seconded the motion. The motion CARRIED [6-0-0]. **APPROVED**

AYE: Mills, Gaither, Wright, Fleming, Grandy, Johnson  
NAY: None

Brant Phillips, Esq., addressed the Agency on behalf of the applicant.

Speaking in support were: Jillian Wright, Regional Vice President Operations, Amsurg Corporation, Debbie McMillan, Division President, Amsurg Corporation, Dr. Suhmeet Bhushan, Chattanooga Endoscopy Center

Speaking in opposition was: David Lewis, Esq.

Mr. Mills moved for approval of the project based on: 1) Need – Regarding need, the five procedure rooms and the space for a sixth -- they're going to have approximately -- or close to -- 12,000 cases projected over the next two years, and it exceeds the capacity for three rooms. And I believe it exceeds the capacity for five as well, as they said it would be at about 105 percent of the standard. It also is going to improve accessibility for a first-floor entry and provide ample parking, and, also, it will be updating a 17-year-old facility that's only had minor renovations to a state-of-the-art facility; 2) Economic Feasibility – they will secure a commercial loan, as well as both years are projected to be profitable in the first two years of operation; and 3) Orderly Development – the growth rate in the service area looks to be, for the 50-years-and-older population, in 2015 to 2019, 37 -- or greater than 37 percent, which means an increase, in projective lives, of 11,000 between that same time period. And with the scopes to be done every ten years, as, recommended, this will provide the opportunity for them to be able to provide the services to that patient population with the State Health Plan benchmark. Mr. Grandy and Mr. Wright seconded the motion. The motion CARRIED [6-0-0]. **APPROVED**

AYE: Mills, Gaither, Wright, Fleming, Grandy, Johnson  
NAY: None

**Stones River Manor - (Murfreesboro, Rutherford County), TN - Project No. CN1506-026**

The establishment of a 30 bed Medicare-certified skilled nursing home located at 205 Haynes Drive, Murfreesboro (Rutherford County), TN 37129. The estimated project cost is \$2,729,126.75.

Michael D. Brent, Esq., and Kirk Mason CEO of Stones River Manor, addressed the Agency on behalf of the applicant.

Summation waived.

Mr. Wright moved for approval of the project based on: 1) Need – As far as need, the projected census in years one and two support the criteria for need for new facilities at 90 percent occupancy or greater. That, combined with the projected bed needs by 2017 and the current utilization numbers that we have available to us, and the fact that there are no competitors here -- and some of their competitors are sitting here in this room, but they're not actually here in opposition -- leads me to believe that the need is adequately established; 2) Economic Feasibility – Economic feasibility is met by cash reserves and supplemented by commercial loans and grants; and 3) Orderly Development – the project does contribute to the orderly development of adequate and effective health care the ability to age in place within a CCRC campus promotes a positive experience for familiarity, comfort, and continuity of care both patients. Mr. Ridgway seconded the motion. The motion CARRIED [8-0-0]. **APPROVED**

AYE: Mills, Gaither, Ridgway, Wright, Burns, Fleming, Grandy, Johnson

NAY: None

**Ms. Burns left the Meeting.**

**GENERAL COUNSEL'S REPORT**

*Jim Christoffersen summarized the following CON modification requests:*

**Select Specialty Hospital-Memphis, (Memphis, Shelby County), TN – CN1212-062A**

*Mr. Ridgway recused.*

Request for a four year extension to the expiration date from August 1, 2016 to August 1, 2020. The project was approved on May 22, 2013 for the addition of 28 long term acute beds to the existing 39-bed facility, located in leased space at St. Francis Hospital, 5959 Park Avenue, Memphis (Shelby County), TN. Select Specialty will also add 10 beds under the statutory exemption available to hospitals with less than 100 beds found at TCA § 68-11-107(g) for a total licensed bed complement of 77 long term acute care beds. If the additional 28-beds are approved, St. Francis Hospital will reduce its license by 38-beds (28 plus 10 beds per statutory exemption). The estimated project cost was \$6,898,392.00. Deferred from the August Meeting.

Byron Trauger, Esq., addressed the Agency on behalf of the applicant.

Mr. Grandy moved for approval of the project for a 4 year extension of the expiration date from August 1, 2016 to August 1, 2020. Mr. Wright seconded the motion. The motion CARRIED [6-0-0]. **APPROVED**

AYE: Mills, Gaither, Wright, Fleming, Grandy, Johnson

NAY: None

**Metro Knoxville HMA, LLC d/b/a Tennova Healthcare – North Knoxville Medical Center (f/k/a Mercy Health System, Inc. d/b/a Mercy Medical Center North), (Powell, Knox County), TN – CN1106-019AE**

Request for a 1 year extension of the expiration date from December 1, 2015 to December 1, 2016. This request is for the 2nd extension. The project was unanimously approved on October 26, 2011 for the acquisition of a second linear accelerator to be located and utilized on the Tennova Healthcare – North

Knoxville Medical Center campus. The original expiration date of December 1, 2014 was extended to December 1, 2015 on November 19, 2014 by a unanimous vote. The project cost was approved for \$4,694,671.00. **DEFERRED TO OCTOBER MEETING**

**Rosewood Manor, (Springhill, Maury County), TN – CN0703-021AEEE**

Request for a twenty-four (24) month extension of the expiration date from September 1, 2016 to September 1, 2018. This request is for the 4th extension. The project was approved by unanimous vote on July 25, 2007 for the replacement and relocation of the existing nursing home, and the addition of thirty (30) Medicare certified skilled nursing beds for an increase in licensed beds from sixty-eight (68) beds to ninety-eight (98) SNF beds with an estimated project cost of \$10,668,976. Request for an increase in approved project cost of approximately 11.5%: from \$10,668,976 to \$11,898,000. The original expiration date of September 1, 2009 was extended to September 1, 2011 on July 22, 2009 by a vote of 6-2-0; the expiration date was extended on July 27, 2011 to September 1, 2013 by unanimous vote; and the expiration date was extended on August 28, 2013 by a 8-1 vote.

Jerry Taylor, Esq., addressed the Agency on behalf of the applicant.

Mr. Ridgway moved for approval of the project to increase the project cost 11-and-a-half percent from the 10.67 million to 11.9 million, as well as extend the expiration date of their CON from September 1, 2016 to September 1, 2018. Mr. Grandy and Mr. Wright seconded the motion. The motion CARRIED [7-0-0].

**APPROVED**

AYE: Mills, Gaither, Ridgway, Wright, Fleming, Grandy, Johnson  
NAY: None

**CONTESTED CASES UPDATE**

Mr. Christoffersen provided an update on contested cases.

**Conflict of Interest/Ex Parte Discussion Communications**

Mr. Christoffersen discussed statutory and regulatory requirements governing Conflict of Interest and Ex Parte communications.

**OTHER BUSINESS—AUDIT COMMITTEE**

The 2015 Audit Committee Meeting was set for November 18, 2015. FY2015/2016 Audit Committee members include Ms. Burns, Mr. Doolittle, Mr. Grandy, Ms. Jordan, and Mr. Mills who will serve as Chairman.

**ADJOURNMENT**

There being no further business, the meeting adjourned



Melanie M. Hill, Executive Director

\* Minutes provide only a brief staff summary of the meeting and are not intended to be an all-inclusive report. The HSDA maintains a detailed record of each meeting (recording and transcript) that is available upon request by contacting the HSDA office at 615-741-2364.